

Hearing: November 20, 2019 at 10 a.m.

NEWHOPE LAW, PC  
CLEMENT CHENG (CA Bar #198359)  
4522 Katella Ave, Suite 200  
Los Alamitos, CA 90720  
(714) 825-0555

Attorney for Sportspower Ltd.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:  
SEARS HOLDING CORPORATION,  
*et al.*,  
Debtor.

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**Chapter 11**  
Case No. 18-23538 (RDD)  
(Jointly Administered)

**RESPONSE IN OPPOSITION TO DEBTORS' TENTH OMNIBUS  
OBJECTION TO PROOFS OF CLAIM BY SPORTSPOWER, LTD. WITH  
REGARD TO CLAIM NO. 13944**

TO THE HON. ROBERT D. DRAIN,  
UNITED STATES BANKRUPTCY JUDGE:

Sportspower Ltd. ("Sportspower") hereby submits this response to Debtors' Tenth Omnibus Objection to Proofs of Claim [Dkt. No. 5237]. Claim 13944 is an amended version of Claims 4284 and 3352. This response is being filed in an abundance of caution since Claim No. 13944 has already been allowed.

The Notice Of Claims Allowed on October 1, 2019 includes administrative claim 13944 as seen in document 5298, Exhibit A. Paragraph 2 of the Notice of Allowed Claims [Dkt. No. 5298], provides that "The Allowed Administrative Expense Claims resolve any and all motions for allowance of payment of the Administrative Expense Claims listed in Exhibit A and all motions and/or objections filed with respect thereto are deemed withdrawn upon entry of an order by the Bankruptcy Court (a) confirming the Plan and (b) approving the Administrative Expense Claims Consent Program, filed contemporaneously

herewith.[3] The Debtors will update the claims register accordingly.”

Sportspower transferred this claim to Whitebox to improve cash flow, but has an obligation to buy back the claim if it is not afforded administrative priority. Debtor attorney Sunny Singh of WEIL, GOTSHAL & MANGES LLP Attorneys for Debtors and Debtors in Possession signed this notice. Thus, the Tenth Omnibus Objection filed September 26, 2019 should be deemed withdrawn.

If the Debtors' objection is not withdrawn as to Sportspower's claims, Sportspower would argue that this court should not make a ruling that contradicts the World Imports decision from the Third Circuit. This would really upset established expectations and create an unnecessary circuit split that would put New York based retailers at a competitive market disadvantage to retailers based in the Third Circuit for no good reason. Sportspower wanted to support Sears so should be allowed to continue to do so.

Sportspower and the debtor used the UCC definition of receipt per the World Imports decision. Sportspower also received the letter of October 15, 2018 as seen in Docket 5400-1 Exhibit 1, which was the letter to vendors to convince vendors to continue shipment of the goods instead of retrieving the goods by issuing stop shipment orders. Sportspower, like the other vendors, also relied on the Debtor's affirmative written and verbal statements and decided to support Sears. It is vital for the future survival of Sears and for other distressed New York based retailers that the court not deviate from the UCC definition of physical delivery.

Sears management has a plan to bring back Sears and make it stronger than ever before. Staying with the UCC definition of physical receipt is one step in making that plan a reality. Sportspower wants to continue to support Sears so needs the court's help to make that happen. The court should act in the best interest of the public, which would include Sears, retailers based in New York,

vendors that remain loyal to Sears, and the general consuming public that would be served by Sears.

WHEREFORE, for the reasons stated in this Response in opposition to the Tenth Omnibus Objection, Debtors objection to Claim No. 13944 should be overruled.

Respectfully submitted,

Dated: October 28, 2019

By: /Clement Cheng/  
CLEMENT CHENG  
Attorney for Plaintiff (CA Bar #198359)  
4522 Katella Ave, Suite 200  
Los Alamitos, CA 90720  
(714) 825-0555

### **CERTIFICATE OF SERVICE**

It is hereby certified that RESPONSE IN OPPOSITION TO DEBTORS' TENTH OMNIBUS OBJECTION TO PROOFS OF CLAIM BY SPORTSPOWER, LTD. WITH REGARD TO CLAIM NO. 13944 was served on Weil, Gotschal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn. Ray C. Schrock, Esq., Jacqueline Marcus, Esq., Garrett A. Fail, Esq., and Sunny Singh, Esq.), attorneys for the Debtors, and Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036 (Attn: Philip C. Dublin, Esq., Ira Dizengoff, Esq., and Sara Lynne Barauner, Esq.) attorneys for the Official Committee of Unsecured Creditors, and other interested parties by electronic mail through the Bankruptcy Court's ECF System.

\_\_\_\_\_/Clement Cheng/\_\_\_\_\_